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HOUSE BILL 376

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Danice Picraux

AN ACT

RELATING TO HEALTH CARE; CLARIFYING CERTAIN DUTIES OF THE BOARD OF NURSING; PROVIDING FOR A NURSING EXCELLENCE PROGRAM; CREATING THE NURSING EXCELLENCE FUND; AMENDING AND ENACTING SECTIONS OF THE NURSING PRACTICE ACT; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 61-3-1 NMSA 1978 (being Laws 1968, Chapter 44, Section 1) is amended to read:

"61-3-1. SHORT TITLE. - - [~~Sections 67-2-1 through 67-2-26 New Mexico Statutes Annotated, 1953 Compilation~~] Chapter 61, Article 3 NMSA 1978 may be cited as the "Nursing Practice Act". "

Section 2. A new section of the Nursing Practice Act is enacted to read:

"[NEW MATERIAL] NURSING EXCELLENCE PROGRAM - LICENSE

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1 RENEWAL SURCHARGE. --

2 A. The board may establish a "nursing excellence  
3 program" that provides strategies to enhance recruitment and  
4 retention of professional nurses, increase career and  
5 educational opportunities and improve interaction with health  
6 facilities administrations, the medical profession and  
7 institutions of higher education.

8 B. The board may impose a license renewal surcharge  
9 for each nursing license renewed in an amount not to exceed  
10 twenty dollars (\$20.00) to implement and maintain the nursing  
11 excellence program. The license renewal surcharge shall be  
12 deposited in the nursing excellence fund. "

13 Section 3. A new section of the Nursing Practice Act is  
14 enacted to read:

15 "[NEW MATERIAL] NURSING EXCELLENCE FUND CREATED. --The  
16 "nursing excellence fund" is created in the state treasury to  
17 support the nursing excellence program. The fund consists of  
18 license renewal surcharges, appropriations, gifts, grants,  
19 donations and income from investment of the fund. Any income  
20 earned on investment of the fund shall remain in the fund.  
21 Money in the fund shall not revert to any other fund at the end  
22 of a fiscal year. The fund shall be administered by the board  
23 and money in the fund is appropriated to the board to carry out  
24 the purposes of the nursing excellence program. Disbursements  
25 from the fund shall be made only upon warrant drawn by the

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1 secretary of finance and administration pursuant to vouchers  
2 signed by the chairman of the board or his authorized  
3 representative. "

4 Section 4. Section 61-3-10 NMSA 1978 (being Laws 1968,  
5 Chapter 44, Section 7, as amended) is amended to read:

6 "61-3-10. POWERS--DUTIES.--The board:

7 A. shall adopt and revise such rules and  
8 regulations as may be necessary to enable it to carry into  
9 effect the provisions of the Nursing Practice Act and to  
10 maintain high standards of practice;

11 B. shall prescribe standards and approve curricula  
12 for educational programs preparing persons for licensure under  
13 the Nursing Practice Act;

14 C. shall provide for surveys of educational  
15 programs preparing persons for licensure under the Nursing  
16 Practice Act;

17 D. shall grant, deny or withdraw approval from  
18 educational programs for failure to meet prescribed standards,  
19 [~~provided that~~] if a majority of the board concurs in [~~any~~] the  
20 decision;

21 E. shall provide for the examination, licensing and  
22 renewal of licenses of applicants;

23 F. shall conduct hearings upon charges relating to  
24 discipline of a licensee or the denial, suspension or  
25 revocation of a license in accordance with the procedures of

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1 the Uni form Licensing Act;

2 G. shall cause the prosecution of all persons,  
3 including firms, associations, institutions and corporations,  
4 violating the Nursing Practice Act and have the power to incur  
5 such expense as is necessary therefor;

6 H. shall keep a record of all proceedings;

7 I. shall make an annual report to the governor;

8 J. shall appoint and employ a qualified registered  
9 nurse, who shall not be a member of the board, to serve as  
10 executive officer to the board, who shall define the duties and  
11 responsibilities of the executive officer, except that the  
12 power to grant, deny or withdraw approval for schools of  
13 nursing or to revoke, suspend or withhold any license  
14 authorized by the Nursing Practice Act shall not be delegated  
15 by the board;

16 K. shall provide for such qualified assistants as  
17 may be necessary to carry out the provisions of the Nursing  
18 Practice Act. Such employees shall be paid a salary  
19 commensurate with their duties;

20 L. shall, for the purpose of protecting the health  
21 and well-being of the citizens of New Mexico and promoting  
22 current nursing knowledge and practice, adopt rules and  
23 regulations establishing continuing education requirements as a  
24 condition of license renewal and shall study methods of  
25 monitoring continuing competence;

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1 M may appoint advisory committees consisting of at  
2 least one member who is a board member and at least two members  
3 expert in the pertinent field of health care to assist it in  
4 the performance of its duties. Committee members may be  
5 reimbursed as provided in the Per Diem and Mileage Act;

6 N. may adopt and revise rules and regulations  
7 designed to maintain an inactive status listing for registered  
8 nurses and licensed practical nurses;

9 O. may adopt rules and regulations to regulate the  
10 advanced practice of professional registered nursing and  
11 expanded practice of licensed practical nursing;

12 P. shall license qualified certified nurse  
13 practitioners, certified registered nurse anesthetists and  
14 clinical nurse specialists; and

15 Q. shall adopt rules and regulations establishing  
16 standards for authorizing prescriptive authority to certified  
17 nurse practitioners, ~~[and]~~ clinical nurse specialists and  
18 certified registered nurse anesthetists. "

19 Section 5. Section 61-3-10.1 NMSA 1978 (being Laws 1993,  
20 Chapter 61, Section 2, as amended) is amended to read:

21 "61-3-10.1. HEMODIALYSIS TECHNICIANS--TRAINING PROGRAMS--  
22 CERTIFICATION. --

23 A. As used in this section:

24 (1) "hemodialysis technician" means a person  
25 who is certified by the board to assist with the direct care of

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1 a patient undergoing hemodialysis, including performing  
2 arteriovenous punctures for dialysis access, injecting  
3 intradermal lidocaine in preparation for dialysis access,  
4 administering heparin bolus and connecting a dialysis access to  
5 isotonic saline or heparinized isotonic saline according to  
6 standards adopted by the board; and

7 (2) "training program" means an educational  
8 program approved by the board for persons seeking certification  
9 as hemodialysis technicians.

10 B. Unless certified as a hemodialysis technician  
11 pursuant to this section, no person shall practice as a  
12 hemodialysis technician or use the title "certified  
13 hemodialysis technician", "hemodialysis technician" or other  
14 title, abbreviation, letters, figures, signs or devices to  
15 indicate or imply that the person is a hemodialysis technician.

16 C. The board shall:

17 (1) maintain a permanent register of all  
18 hemodialysis technicians;

19 (2) adopt rules and regulations that set  
20 reasonable requirements for training programs, including  
21 prescribing standards and approving curricula;

22 (3) provide for periodic evaluation of  
23 training programs at least every two years;

24 (4) grant, deny or withdraw approval from  
25 training programs for failure to meet prescribed standards;

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1 [and]

2 (5) withdraw approval from a training program  
3 for failure to maintain a current contract with the board or  
4 for failure to pay the administrative fee as provided in the  
5 contract; and

6 [~~(5)~~] (6) conduct hearings on charges relating  
7 to discipline of a hemodialysis technician and may deny  
8 certification, place a technician on probation or suspend or  
9 revoke a certificate in accordance with the Uniform Licensing  
10 Act.

11 D. Every applicant for certification as a  
12 hemodialysis technician shall pay the required application fee,  
13 submit written evidence of having completed a training program  
14 and successfully complete a board-approved examination. The  
15 board shall issue a certificate to any person who fulfills the  
16 requirements for certification.

17 E. A certificate shall be renewed every two years  
18 by the last day of the hemodialysis technician's certification  
19 month upon payment of the required fee, proof of employment as  
20 a hemodialysis technician and proof of having met any  
21 continuing education requirements adopted by the board.

22 F. The board shall set by rule the following  
23 nonrefundable fees:

24 (1) initial certification of a hemodialysis  
25 technician by examination, not to exceed sixty dollars

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1 (\$60.00);

2 (2) renewal of certification of a hemodialysis  
3 technician, not to exceed sixty dollars (\$60.00);

4 (3) reactivation of a certificate of a  
5 hemodialysis technician after failure to renew a certificate,  
6 not to exceed thirty dollars (\$30.00);

7 (4) initial review and approval of a training  
8 program, not to exceed three hundred dollars (\$300);

9 (5) subsequent review and approval of a  
10 training program where the hemodialysis unit has changed the  
11 program, not to exceed one hundred dollars (\$100);

12 (6) subsequent review and approval of a  
13 training program when a change has been required by a change in  
14 board policy, rules or regulations, not to exceed fifty dollars  
15 (\$50.00); and

16 (7) periodic evaluation of a training program,  
17 not to exceed one hundred fifty dollars (\$150).

18 G. Each training program shall, through contract or  
19 agreement, pay the board for administrative and other costs  
20 associated with oversight of the program "

21 Section 6. Section 61-3-10.2 NMSA 1978 (being Laws 1991,  
22 Chapter 209, Section 1, as amended) is amended to read:

23 "61-3-10.2. MEDICATION AIDES. --

24 A. This section shall permit the operation of a  
25 program for certification of medication aides and medication

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1 aide training programs in licensed intermediate care facilities  
2 for the mentally retarded. The purpose of the program is to  
3 effectuate a cost-containment and efficient program for the  
4 administration of the medicaid program. It is the intention of  
5 the legislature that costs of continuing the program shall be  
6 provided through appropriate agreements between the board and  
7 licensed intermediate care facilities for the mentally  
8 retarded.

9 B. For the purposes of this section, "medication  
10 aide" means a person who, under the supervision of a licensed  
11 nurse in a licensed intermediate care facility for the mentally  
12 retarded, is permitted to administer oral medications according  
13 to the standards adopted by the board.

14 C. Unless certified as a medication aide under the  
15 Nursing Practice Act, no person shall:

- 16 (1) practice as a medication aide; or  
17 (2) use the titles "certified medication aide"  
18 or "medication aide" or any other title, abbreviation, letters,  
19 figures, signs or devices to indicate or imply that the person  
20 is a certified medication aide.

21 D. The board shall:

- 22 (1) maintain a permanent register of all  
23 persons to whom certification to practice as a certified  
24 medication aide is provided;  
25 (2) adopt rules and regulations that set

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1 reasonable requirements for medication aide educational or  
2 training programs and certification that protect the health and  
3 well-being of the mentally retarded while facilitating low-cost  
4 access to medication services;

5 (3) withdraw approval from a medication aide  
6 training program or participant program for failure to maintain  
7 a current contract with the board or for failure to pay the  
8 administrative fee as provided in the contract;

9 [~~(3)~~] (4) adopt rules and regulations  
10 governing the supervision of medication aides by licensed  
11 nurses, which shall include, but not be limited to, standards  
12 for medication aides and performance evaluations of medication  
13 aides; and

14 [~~(4)~~] (5) conduct hearings upon charges  
15 relating to discipline of a certified medication aide or the  
16 denial, suspension or revocation of a medication aide  
17 certificate in accordance with the Uniform Licensing Act.

18 E. Every applicant for certification as a  
19 medication aide shall pay the required application fee, submit  
20 written evidence of having completed a board-approved program  
21 for the certification of medication aides and successfully  
22 complete a board-approved examination.

23 F. The board shall issue a certificate enabling a  
24 person to function as a medication aide to any person who  
25 fulfills the requirements for medication aides set by law.

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1           G. Every certificate issued by the board to  
2 practice as a medication aide shall be renewed every two years  
3 by the last day of the medication aide's birth month and upon  
4 payment of the required fee. The medication aide seeking  
5 renewal shall submit proof of employment as a medication aide  
6 and proof of having met any continuing education requirements  
7 adopted by the board.

8           H. Applicants for certification or renewal of  
9 certification as certified medication aides shall pay the  
10 following fees:

11                   (1) for initial certification by examination  
12 or certification after a failure to renew timely an initial  
13 certification, the fee shall be set by the board not to exceed  
14 thirty dollars (\$30.00); and

15                   (2) for renewal of certification, the fee  
16 shall be set by the board not to exceed thirty dollars  
17 (\$30.00).

18           I. The board shall:

19                   (1) prescribe standards and approve curricula  
20 for educational or training programs preparing persons as  
21 medication aides;

22                   (2) set a reasonable fee for the review and  
23 approval of educational or training programs for certification  
24 as certified medication aides not to exceed three hundred  
25 dollars (\$300) for each initial review and approval or one

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1 hundred dollars (\$100) for each subsequent review and approval  
2 in case of change or modification in a training program;

3 (3) provide for periodic evaluation at  
4 intervals of no less than two years of educational or training  
5 programs preparing persons for certification as certified  
6 medication aides, including setting a reasonable fee for each  
7 periodic evaluation, which shall not exceed one hundred fifty  
8 dollars (\$150); and

9 (4) grant, deny or withdraw approval from  
10 medication aide programs for failure to meet prescribed  
11 standards; provided that, in the event of a denial or  
12 withdrawal of approval, none of the fees provided for in this  
13 section shall be refundable. "

14 Section 7. Section 61-3-18 NMSA 1978 (being Laws 1968,  
15 Chapter 44, Section 15, as amended) is amended to read:

16 "61-3-18. QUALIFICATIONS FOR LICENSURE AS A LICENSED  
17 PRACTICAL NURSE. -- Before being considered for licensure as a  
18 licensed practical nurse, either by endorsement or examination,  
19 under Section 61-3-19 NMSA 1978, an applicant shall:

20 A. furnish evidence satisfactory to the board that  
21 the applicant has successfully completed an approved program of  
22 nursing for licensure as a licensed practical nurse or  
23 registered nurse and has graduated or is eligible for  
24 graduation; and

25 B. at the cost to the applicant, provide the board

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1 with fingerprints and other information necessary for a state  
2 and national criminal background check. "

3 Section 8. Section 61-3-23 NMSA 1978 (being Laws 1977,  
4 Chapter 220, Section 14, as amended) is amended to read:

5 "61-3-23. PERMIT TO PRACTICE FOR GRADUATE NURSES. --

6 A. The board may issue a permit to practice to an  
7 applicant upon completion of an approved course of study and  
8 upon application to take the [~~first available~~] national  
9 licensing examination after graduation within the time frame  
10 set by rules of the board.

11 B. The permit to practice shall be issued for  
12 practice under direct supervision at a specified place of  
13 employment in the state.

14 C. The permit to practice shall be valid from  
15 issuance until the results of the national licensing  
16 examination are disseminated by the board office to the  
17 examinee, at which time the permit is void and the applicant  
18 who has passed the examination may be issued a license to  
19 practice. "

20 Section 9. Section 61-3-24 NMSA 1978 (being Laws 1968,  
21 Chapter 44, Section 20, as amended) is amended to read:

22 "61-3-24. RENEWAL OF LICENSES. --

23 A. Any person licensed pursuant to the provisions  
24 of the Nursing Practice Act who intends to continue practice  
25 shall renew the license every two years by the end of the

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1 applicant's renewal month except when on active military duty  
2 during a military action.

3 B. At least six weeks before the end of the renewal  
4 month, the board shall mail to the licensee an application  
5 blank, which shall be returned to the board before the end of  
6 the renewal month, together with proof of completion of  
7 continuing education requirements as required by the board and  
8 the renewal fee set by the board in an amount not to exceed one  
9 hundred dollars (\$100).

10 C. Upon receipt of the application and fee, the  
11 board shall verify the licensee's eligibility for continued  
12 licensure and issue to the applicant a renewal license for two  
13 years. Renewal shall render the holder a legal practitioner of  
14 nursing for the period stated on the renewal license.

15 ~~[D. Applicants for renewal who have not been~~  
16 ~~actually engaged in nursing for two years or more shall furnish~~  
17 ~~the board evidence of having completed refresher courses of~~  
18 ~~continuing education as required by regulations adopted by the~~  
19 ~~board.]~~

20 E.] D. Any person who allows his license to lapse  
21 by failure to secure renewal as provided in this section shall  
22 be reinstated by the board on payment of the fee for the  
23 current two years plus a reinstatement fee to be set by the  
24 board in an amount that shall not exceed two hundred dollars  
25 (\$200), provided that all requirements have been met. "

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1           Section 10. Section 61-3-27 NMSA 1978 (being Laws 1968,  
2 Chapter 44, Section 23, as amended) is amended to read:

3           "61-3-27. FUND ESTABLISHED--DISPOSITION--METHOD OF  
4 PAYMENT.--

5           A. There is created a "board of nursing fund".

6           B. Except as provided in Sections 2 and 3 of this  
7 2003 act, all funds received by the board and money collected  
8 under the Nursing Practice Act shall be deposited with the  
9 state treasurer. The state treasurer shall place the money to  
10 the credit of the board of nursing fund. Any [~~interest~~] income  
11 earned on investment of the fund shall [~~be credited to~~] remain  
12 in the fund.

13           C. Payments out of the board of nursing fund shall  
14 be on vouchers issued and signed by the person designated by  
15 the board upon warrants drawn by the department of finance and  
16 administration in accordance with the budget approved by the  
17 department.

18           D. All amounts paid into the board of nursing fund  
19 shall be subject to the order of the board and shall only be  
20 used for the purpose of meeting necessary expenses incurred in  
21 the enforcement of the purposes of the Nursing Practice Act,  
22 the duties imposed by that act and the promotion of nursing  
23 education and standards in this state. All money unused at the  
24 end of the fiscal year shall remain in the board of nursing  
25 fund for use in accordance with the provisions of the Nursing

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1 Practice Act to further the purposes of that act.

2 E. All funds that may have accumulated to the  
3 credit of the board under any previous act shall be continued  
4 for use by the board in administration of the Nursing Practice  
5 Act. "

6 Section 11. Section 61-3-29 NMSA 1978 (being Laws 1968,  
7 Chapter 44, Section 25, as amended) is amended to read:

8 "61-3-29. EXCEPTIONS. -- The Nursing Practice Act shall not  
9 apply to or affect:

10 A. gratuitous nursing by friends or members of the  
11 family;

12 B. nursing assistance in case of emergencies;

13 C. nursing by students when enrolled in approved  
14 schools of nursing or approved courses for the education of  
15 professional or practical nurses when such nursing is part of  
16 the educational program;

17 D. nursing in this state by a legally licensed  
18 nurse of another state whose employment requires the nurse to  
19 transport a [~~citizen of this state~~] patient or who is a camp  
20 nurse who accompanies and cares for a patient temporarily  
21 residing in this state [~~provided that~~] if the nurse's practice  
22 in this state does not exceed three months and the nurse does  
23 not claim to be licensed in this state;

24 E. nursing in this state by any person who is  
25 employed by the United States government or any bureau,

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1 division or agency thereof, while in the discharge of his  
2 official duties;

3 F. the practice of midwifery by any person other  
4 than a registered nurse who is certified or licensed in this  
5 state to practice midwifery;

6 G. any person working as a home health aide, unless  
7 performing acts defined as professional nursing or practical  
8 nursing pursuant to the Nursing Practice Act;

9 H. any nursing aide or orderly, unless performing  
10 acts defined as professional nursing or practical nursing  
11 pursuant to the Nursing Practice Act;

12 I. any registered nurse holding a current license  
13 in another jurisdiction who is enrolled in any professional  
14 course requiring nursing practice as a part of the educational  
15 program;

16 J. performance by a personal care provider in a  
17 noninstitutional setting of bowel and bladder assistance for an  
18 individual whom a health care provider certifies is stable, not  
19 currently in need of medical care and able to communicate and  
20 assess his own needs; or

21 K. medication aides working in licensed  
22 intermediate care facilities for the mentally retarded or  
23 serving persons who are participating in the developmentally  
24 disabled medicaid waiver program and who have completed a  
25 board-approved medication aide training program and who are

1 certified by the board to administer routine oral medications,  
2 which may be expanded to include all medications except  
3 subcutaneous, intramuscular and intravenous injections, unless  
4 the medication aide is performing acts defined as professional  
5 or practical nursing under the Nursing Practice Act. "

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